

UNITED STATES OF AMERICA	}	
	}	
v.	}	Criminal Case No.:
	}	18 MJ 19
MOHAMED ABDELLAHI MOHAMED HORMA	}	

February 5, 2018

COMPLETE TRANSCRIPT OF PROBABLE CAUSE AND DETENTION
BEFORE THE HONORABLE RODERICK C. YOUNG
UNITED STATES MAGISTRATE COURT JUDGE

APPEARANCES:

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KRISTA L. HARDING, RMR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

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1 THE CLERK: In the matter of Criminal Case 18 MJ
2 19. *United States of America v. Mohamed Abdellahi Mohamed*
3 *Horma*.

4 The United States is represented by Ms. Angela
5 Mastandrea-Miller.

6 The defendant is represented by Mr. Joseph
7 Camden.

8 Mr. Ihab Samra interpreting.

9 Are counsel ready to proceed?

10 MS. MASTANDREA-MILLER: The United States is
11 ready.

12 MR. CAMDEN: The defense is ready, Your Honor.

13 THE COURT: All right.

14 Government.

15 MS. MASTANDREA-MILLER: Good afternoon.

16 THE COURT: Good afternoon.

17 MS. MASTANDREA-MILLER: We are here for both the
18 probable cause and a detention hearing for Mr. Mohamed
19 Abdellahi Mohamed Horma who's been charged in a criminal
20 complaint with possession of a firearm by an illegal alien
21 in violation of Title --

22 THE COURT: Get you to slow down just a little
23 bit -

24 MS. MASTANDREA-MILLER: Okay.

25 THE COURT: - for the interpreter.

1 MS. MASTANDREA-MILLER: Oh, sorry. Yes, sir.

2 In violation of Title 18, United States Code,
3 Section 922(g)(5).

4 The United States would call Special Agent
5 Bridgette DePietto to the stand.

6 THE COURT: All right. Please proceed.

7 THE CLERK: Do you affirm under penalty of
8 perjury that the testimony you're about to give, in this
9 case, before this Court, shall be the truth, the whole
10 truth, and nothing but the truth?

11 AGENT DePIETTO: Yes, I do.

12 Whereupon, **Agent Bridgette DePietto**, having been
13 duly sworn in, testifies as follows:

14 **DIRECT EXAMINATION**

15 BY MS. MASTANDREA-MILLER:

16 Q Good afternoon.

17 A Good afternoon.

18 Q Could you please state your name, and spell your last
19 name for the record.

20 A My name is Bridgette DePietto. D-E-P-I-E-T-T-O.

21 Q And are you an agent?

22 A Yes. With the FBI.

23 Q Okay. And Agent DePietto, --

24 THE COURT: You've got to slow down just a
25 little bit for the interpreter.

1 MS. MASTANDREA-MILLER: All right. Thank you.

2 BY MS. MASTANDREA-MILLER:

3 Q As part of your duties and responsibilities with the
4 FBI, did you become involved in an investigation involving
5 the defendant in this case, Mohamed Horma?

6 A Yes.

7 Q And can you tell the Court what was he originally
8 initially charged with in terms of a felony charge in
9 Maryland?

10 A In July of 2016, he was charged with a felony for
11 unstamped cigarettes.

12 Q And is that similar to a cigarette trafficking -

13 A Yes.

14 Q - offense?

15 A Yes.

16 Q And is that a felony?

17 A Yes.

18 Q And are you aware of what the disposition was in that
19 case?

20 A Yes. He was found guilty.

21 Q And was that in July of 2016?

22 A Yes.

23 Q And are you aware of additional charges that he had
24 that had been adjudicated as well?

25 A Yes, I am.

1 Q Now, before we get into the charges in Albemarle
2 County, I want to ask you are you aware that the defendant
3 is here in the United States illegally?

4 A Yes, I am.

5 Q And can you just briefly describe for the Court what
6 it is that you're aware of?

7 A That Mr. Horma arrived in the United States around
8 December of 2013 on a V1 and V2 VISA. He was permitted to
9 stay in the United States for a period of six months until
10 approximately June 2014, and he overstayed his permissible
11 time to stay in the United States.

12 Q So he is here illegally in the United States at this
13 point in time?

14 A Yes.

15 Q And are you also aware that a firearm was purchased
16 on November 12th of 2016?

17 A I am.

18 Q Okay. And can you describe for the Court the
19 circumstances surrounding that firearm purchase?

20 A Yes. On November 16th, Mr. Horma was arrested by
21 Albemarle County. A search was done of his vehicle, it
22 was -- for a firearm was found in his vehicle.

23 A search warrant was issued of his residence. During
24 that search, the firearm was found in the nightstand of
25 his bedroom in that apartment. The firearm was purchased

1 on November 12, 2016.

2 Q And the information set forth in the affidavit in
3 support of the criminal complaint, you prepared that,
4 correct?

5 A Yes.

6 Q And is all the information that's set forth in there
7 true and correct?

8 A Yes.

9 Q And that includes that it was a Ruger firearm that
10 was purchased?

11 A Yes, it was a Ruger 9 millimeter.

12 Q And in addition, that firearm was manufactured
13 outside of the Commonwealth of Virginia?

14 A Yes.

15 Q Okay. And in addition to video available showing the
16 defendant and another individual going into the store to
17 purchase the firearm, are you aware of statements that
18 were made by other people, as well as the defendant, with
19 regard to that purchase?

20 A Yes. I'm aware of two individuals who had made
21 separate statements stating that the weapon was purchased
22 by someone else for Mr. Horma.

23 Q And are you also aware that Mr. Horma is on videotape
24 post-Miranda making a statement with regard to the
25 purchase of that firearm?

1 A Yes, I am.

2 Q And during that interview, does he talk about the
3 fact that it was purchased because he didn't have a
4 quote/unquote, green card?

5 A Correct.

6 Q And also that it was -- he had the firearm because
7 the person who was the actual straw purchaser was too
8 stupid to keep that firearm, basically?

9 A Correct. That is what he said.

10 Q And that his girlfriend was not mentally healthy
11 enough to keep the firearm?

12 A Correct.

13 Q Okay. Now, just very briefly, and this would go
14 really toward the risk of flight. Are you aware that
15 there is an ICE detainer on the defendant as well as our
16 own detainer?

17 A Yes, I am.

18 Q And could you also describe for the Court while the
19 defendant was on -- under charges in, I believe, Henrico
20 or Albemarle County, he was on home electronic monitoring,
21 correct?

22 A Yes. After he was arrested in November 2016, he was
23 bonded out under the terms that he wore an ankle monitor.
24 He was then arrested again in April 2017 while wearing
25 that GPS monitor for, again, possession of untaxed

1 cigarettes.

2 Q And was he ultimately convicted of three separate
3 felonies involving that?

4 A Yes. He was convicted in Albemarle of a felony,
5 Chesterfield of a felony, Henrico of a felony. And then
6 he served time in Henrico for those three felony charges.

7 Q And just to be clear, at the time that he bought the
8 firearm was he also under indictment in Maryland for
9 cigarette trafficking charges?

10 A Yes, for the July 2016 charges in Maryland.

11 Q And that was a felon -- that's a felony, correct?

12 A That was a felony charge, yes.

13 MS. MASTANDREA-MILLER: Okay. Thank you.

14 I have no further questions.

15 THE COURT: All right.

16 Mr. Camden, any cross-examination?

17 MR. CAMDEN: Yes, if I could quickly, Your
18 Honor.

19 **CROSS-EXAMINATION**

20 BY MR. CAMDEN:

21 Q Agent DePietto, so you said he was indicted in
22 Maryland in July of 2016, correct?

23 A Yes.

24 Q But he did not plead guilty immediately to that
25 charge, right?

1 A I don't know exactly the amount of time from the time
2 of the charge to the plea in terms of what immediately
3 would mean for you.

4 Q Would November 15, 2016, sound like about the date he
5 pled guilty in that case?

6 A I believe that was his sentencing date.

7 Q Okay. So would November -- oh. Have you checked the
8 status of that case or the docket of that case in Maryland
9 -- from the Maryland court website?

10 A Have I checked the status?

11 Q Yes. Have you looked up the docket in that case?

12 A Yes, I have.

13 Q Okay. If I could show you -- what's the -- so you
14 stated that he arrived on a non-immigrant VISA, right?

15 A Yes. A V-1 and V-2.

16 Q Right.

17 A In December 2013.

18 Q Right. And that he overstayed that VISA?

19 A Yes.

20 Q Okay. Where -- what's your source for that
21 information?

22 A The -- his Alien File, and information that was
23 reviewed by Special Agent Tom Duffey who's with Homeland
24 Security.

25 Q Okay. So you have seen his A-File?

1 A I have seen his detainer and I have seen parts of his
2 A-File, yes.

3 Q Okay. And just for the record to be complete, an
4 A-File is a file that is created, and kept, regarding a
5 person who is not a U.S. citizen, correct?

6 A An alien, yes. That's my understanding.

7 Q And it has -- in that file are contained all of the
8 documents regarding admissions to the United States or
9 encounters with immigration officers, correct?

10 A I'm not exactly sure exactly what is in his A-File
11 and what every A-File includes.

12 Q Okay. You are aware though that he filed a claim for
13 asylum, correct?

14 A I am aware that he did.

15 Q Okay. And you know that that was filed sometime in
16 May of 2014, correct?

17 A I understand it was in 2014, yes.

18 Q Okay. And you understand it was before his
19 non-immigrant VISA expired, correct?

20 A I believe it was, yes.

21 Q And you know that for a person who is here who has a
22 pending asylum application, immigration officers, or ICE,
23 can allow them employment authorization, correct?

24 A If they've filed for a claim for asylum after a
25 period of time, yes, you can apply for employment.

1 Q And they can issue a social security number, correct?

2 A Yes, they do.

3 Q And those documents were in fact issued to Mr. Horma,
4 weren't they?

5 A I believe so.

6 Q Okay. You're also aware that per the federal
7 regulations states that if a person leaves the country
8 without obtaining advanced parole, while an asylum
9 application is pending, that that application is deemed
10 abandoned, correct?

11 A If he travels to the country for which he is seeking
12 asylum for, yes.

13 MR. CAMDEN: For the witness for now, Your
14 Honor, just to sort of refresh her recollection first. If
15 we need to introduce it, I'll mark it and introduce it.

16 MS. MASTANDREA-MILLER: Your Honor, I'm going to
17 object. There's no -- no question before her that her
18 recollection needs to be refreshed on.

19 THE COURT: Right. That was my question is what
20 are you refreshing? I don't remember her saying anything
21 that --

22 MR. CAMDEN: She stated that the -- an applicant
23 who goes back to the country from which they claim fear
24 would be deemed abandoned. The regulation -- I mean, it
25 says --

1 THE COURT: Well, you need to ask her another
2 question then.

3 MR. CAMDEN: If I could then, Your Honor.

4 BY MR. CAMDEN:

5 Q So you would agree that actually anybody who leaves
6 the United States regardless of which country they go to,
7 while they have a pending asylum application, if they
8 don't get advanced parole, that application is deemed
9 abandoned, right?

10 A My understanding is that there are situations where
11 you can apply for a travel permit to travel to certain
12 countries, not the country that you're seeking asylum
13 from.

14 Q Right. But you have to apply -- and that's called
15 advanced parole, correct?

16 A I don't recall what it's called.

17 Q But if you do not obtain that permission, and leave
18 the country while an asylum application's pending, then
19 it's deemed abandoned, right?

20 A Yes.

21 Q Okay.

22 A That is my understanding.

23 Q You stated that, on direct examination, that two
24 individuals had asserted in interviews with police that
25 the firearm was purchased for Mr. Horma, right?

1 A Correct.

2 Q Who are those two people?

3 A Teresa Abrams and Malik Sidya.

4 Q Malik Sidya. Okay. Now, Malik Sidya was also
5 charged with cigarette smuggling, correct?

6 A I believe he has been, yes.

7 Q Okay. And Malik Sidya, on the video that you
8 obtained from the War Store, was the person who actually
9 purchased the firearm, correct?

10 A Correct.

11 Q Okay. Teresa Abrams, have you had occasion to
12 investigate her mental health?

13 A I have not.

14 Q Have you heard anything regarding her mental health?

15 A Well, I mean, I have --

16 Q Adverse information about her reliability as a
17 witness.

18 A I have not heard anything about the reliability as a
19 witness.

20 Q Have you heard that she was charged -- she had -- she
21 was in possession of marijuana at the time the search
22 warrant was executed?

23 A Yes.

24 Q Okay. And that she admitted that the marijuana was
25 hers?

1 A Yes.

2 Q All right. And you know that it's illegal for a
3 person to both possess marijuana and a firearm?

4 MS. MASTANDREA-MILLER: Your Honor, I'm going to
5 object.

6 AGENT DePIETTO: Yes.

7 THE COURT: Hold on. Hold on.

8 What's your objection?

9 MS. MASTANDREA-MILLER: I'm going to object.

10 I'm not really sure what the relevance of whether or not
11 she was in possession of marijuana, a misdemeanor, or
12 whether she was -- if she has a conviction and he wants to
13 put it up for the Court's consideration, I don't think
14 this witness can answer as to whether or not she -- the
15 possession of marijuana relates to a lack of credibility.

16 MR. CAMDEN: So, Your Honor, the witness wasn't
17 testifying from direct knowledge regarding the location of
18 where the firearm was found and who owned it. She was
19 recounting information she had learned from those two
20 people, Mr. Sidya and Teresa Abrams. So Teresa Abrams'
21 credibility directly influences whether the information
22 we're getting now in court today is reliable, so anything
23 that would go towards her credibility I think is relevant.

24 THE COURT: Right. So -- so your question about
25 whether or not she knew there was marijuana possession at

1 the time of her arrest, I thought at the time that this
2 was discovered is okay.

3 Asking the legal question, I don't see any
4 relevance to that, so that question is struck.

5 MR. CAMDEN: Understood, Your Honor. I think
6 it's judicial notice that that's illegal, so the argument
7 would be --

8 THE COURT: Yes, I know that.

9 Go on to the next question.

10 MR. CAMDEN: Understood, Your Honor.

11 A Also just to clarify --

12 THE COURT: Just a minute. Let him ask a
13 question.

14 BY MR. CAMDEN:

15 Q Were you present during the execution of the search
16 warrant on November 17th?

17 A No.

18 Q Okay. But you did interview Teresa Abrams?

19 A I did.

20 MR. CAMDEN: One second. Sorry, Your Honor.
21 Just one second to organize.

22 BY MR. CAMDEN:

23 Q Are you aware that Mr. Horma has immigration counsel
24 representing him in the immigration proceedings?

25 A I don't know if he currently has counsel. I'm aware

1 that there was counsel during his asylum application
2 process. I don't know if that's still the same counsel
3 that he has now.

4 Q And you're aware that his next court date for a
5 hearing before an immigration judge was set -- scheduled
6 for the year 2021?

7 MS. MASTANDREA-MILLER: Object, Your Honor. I
8 don't see the relevance of when his next court date is as
9 far as the probable cause about whether or not he
10 possessed this firearm.

11 MR. CAMDEN: The government wants --

12 MS. MASTANDREA-MILLER: I don't see the
13 relevance of this.

14 THE COURT: Just -- all right.

15 What's your response?

16 MR. CAMDEN: Yes, Your Honor.

17 The government highlighted for the purposes of
18 risk of flight the existence of an immigration detainer.
19 The fact is he was in compliance with all the immigration
20 conditions, and he was out on bond in that case.

21 THE COURT: Okay.

22 MR. CAMDEN: And he had a pending court date, so
23 that's what I was trying to establish.

24 THE COURT: Sure. I'll allow it. Go ahead.

25 BY MR. CAMDEN:

1 Q So, you understand that his next court date had been
2 scheduled for the year 2021?

3 A I recall seeing a piece of paper that said that it
4 was in 2021.

5 Q Okay. And so immigration officers were aware that he
6 was present in the United States?

7 A Can you repeat the question?

8 Q Immigration officers were aware that he was present
9 in the United States, correct?

10 A I wouldn't assume. But I also don't know what the
11 immigrations officers know.

12 Q Well, a notice to appear which alleged that he was
13 deportable was issued in September 2015, right?

14 A I believe so.

15 Q And then there was a hearing where the next court
16 date was set, correct, in 2021?

17 A That would be a hearing in front of the immigration
18 judge, yes.

19 MR. CAMDEN: Okay. No further questions, Your
20 Honor.

21 THE COURT: All right.

22 Any redirect, Ms. Miller?

23 MS. MASTANDREA-MILLER: Just very briefly, Your
24 Honor.

25 **REDIRECT EXAMINATION**

BY MS. MASTANDREA-MILLER:

Q After he applied for asylum, was he -- was it granted or was it denied?

A No, it was denied.

Q And that doesn't change the fact that he is here on an expired VISA, in other words, here illegally?

A Correct. It does not change that.

MS. MASTANDREA-MILLER: No further questions.

THE COURT: All right.

MR. CAMDEN: I know it's out of order, Your Honor, but that new information that it had been denied I think needs to be addressed by (inaudible).

THE COURT: No. Thank you. All right.

All right, Agent, you may step down. Thank you.

WITNESS STOOD ASIDE

THE COURT: All right, Ms. Miller, call your next witness.

MS. MASTANDREA-MILLER: No further witnesses for the United States, Your Honor.

THE COURT: All right.

Mr. Camden, do you have any witnesses on the issue of probable cause?

MR. CAMDEN: No, Your Honor.

THE COURT: All right.

Is there any argument on the issue of probable

1 cause?

2 MS. MASTANDREA-MILLER: Your Honor, I think we
3 would submit unless the Court has any questions.

4 THE COURT: All right.

5 MS. MASTANDREA-MILLER: We would submit on
6 probable cause.

7 MR. CAMDEN: Yes, Your Honor, if I could.

8 THE COURT: All right.

9 MR. CAMDEN: So 922(g)(5)(A) does require the
10 government -- the element is that the person is unlawfully
11 or illegally present in the United States. So the
12 testimony so far has been that he was admitted pursuant to
13 a VISA. He filed an affirmative asylum application while
14 that VISA was still valid. And then that a person with a
15 pending asylum application cannot leave the country unless
16 in fact given permission to work and a social security
17 number. And the evidence was so far that he's been
18 compliant with the immigration requirements, so I don't
19 believe that qualifies as illegally or unlawfully present
20 in the United States.

21 I have to say I did a lot of research and the
22 background for this. I was able to find some cases from
23 other circuits saying that when a person had entered
24 illegally and had a pending application to adjust status,
25 that that still qualified as unlawfully or illegally

1 present.

2 The difference we've got here is that he had
3 legal authority at the time he crossed the border. He
4 filed the application within -- before the expiration of
5 the VISA, and then he complied with the requirements that
6 state that the person is expected -- and this is -- sorry,
7 for the record, 8 CFR Section 208.8.

8 And it states, quote, "An applicant" -- and I'm
9 reading it for asylum. This is part of the asylum
10 regulations.

11 "An applicant who leaves the United States
12 without first obtaining advance parole under
13 Section 212.5(f) of this chapter shall be presumed to have
14 abandoned his or her application under this section."

15 So there's no way when you -- once you start
16 that process you can't leave without permission, Your
17 Honor, without abandoning the application.

18 I won't get into, at this point I think -- well,
19 I can, but I'd want to seal the hearing, I think, if we
20 were to get into the reasons for the asylum application.

21 And that will go to risk of flight, so I'm
22 addressing just probable cause, Your Honor, right now.

23 THE COURT: Right. We're just doing probable
24 cause.

25 MR. CAMDEN: Right. So it's just that one

1 element, I think. The testimony here pretty much
2 establishes that he had permission to be here. His
3 presence in the United States at the point where he was
4 arrested was not unlawful or illegal.

5 THE COURT: All right.

6 Any response to that, Ms. Miller?

7 MS. MASTANDREA-MILLER: Just very briefly, Your
8 Honor.

9 I think the law is fairly clear, Your Honor,
10 that a person who is -- has overstayed his VISA, even if
11 he's applied for asylum, and that when that asylum is
12 denied, or even if that asylum was pending, he has
13 overstayed his VISA. And there's cases that say exactly
14 that, that he can be prosecuted under 922(g)(5)(A) for
15 being here illegally in the United States.

16 The testimony before the Court is that he is
17 here illegally in the United States, that he applied for
18 asylum, that it was denied and now there's another pending
19 asylum case. That has nothing to do with whether or not
20 he's here illegally. That is -- he is trying to say,
21 look, I know I'm here illegally but I'm asking for
22 permission to stay in the country for whatever reason is
23 that he wants. That doesn't change the 922(g)(5)(A)
24 status of the defendant. That's number one.

25 Number two, the testimony the Court has also

1 heard is that he was under indictment at the time that he
2 purchased this firearm, which is also a crime under
3 922(g) -- 922(n), which while he hasn't been charged with
4 that at this point in time, that will be an additional
5 charge that's forthcoming.

6 To say that the defendant has followed the rules
7 while here in the United States is just not supported by
8 the testimony that the Court has heard. He was convicted
9 of three separate cigarette trafficking felony offenses
10 while he was here in the United States, while he was on
11 bond and on home electronic monitoring or on a GPS
12 monitor.

13 THE COURT: That might go more to detention than
14 probable cause.

15 MS. MASTANDREA-MILLER: Exactly. No, I'm --
16 yeah, I'm just addressing that as well, Judge, because I
17 thought that he was talking about that.

18 THE COURT: Well, just let me (inaudible).

19 MS. MASTANDREA-MILLER: Okay.

20 THE COURT: Let me make a finding on probable
21 cause first, and then we'll deal with detention.

22 MS. MASTANDREA-MILLER: Okay. Thank you. All
23 right.

24 THE COURT: All right, Mr. Horma, based on the
25 evidence elicited during the hearing today, coupled with

1 the information contained in the criminal complaint, I
2 find there's probable cause to believe that you've
3 violated Title 18, United States Code, Section 922(g)(5).

4 All right, so now we'll pivot to the issue of
5 detention.

6 Government, do you have any evidence on the
7 issue of detention?

8 MS. MASTANDREA-MILLER: No evidence, Your Honor.
9 Just argument.

10 THE COURT: All right.

11 Mr. Camden, do you have any evidence on the
12 issue of detention?

13 MR. CAMDEN: If I could for one second, Your
14 Honor.

15 Just what's in the presentence -- sorry, the
16 pretrial services interview, Your Honor. I've got some
17 documents from his immigration case, but I'm also
18 (inaudible).

19 THE COURT: All right.

20 Government, let me hear your argument.

21 MS. MASTANDREA-MILLER: Your Honor, just to kind
22 of continue what I was saying a few minutes ago. First,
23 it's clear that Mr. Horma is here illegally in the United
24 States. But beyond that, while he was on a pretrial
25 release on another felony matter, he continued to disobey

1 orders of the Court and was charged with cigarette
2 trafficking in which he was subsequently convicted.

3 If we look at his criminal record since he has
4 been here, he's been charged, and found guilty, of
5 reckless driving, speeding, driving without a license
6 multiple times, and then found guilty of transporting
7 unstamped cigarettes with a July 29th, 2016, guilty in
8 Howard County Circuit Court in Maryland, and then
9 sentenced on November 15th to 11 months of confinement.

10 Then in the midst of all of that, he is charged
11 with fraudulent purchase of cigarettes, another felony
12 offense. His bond was revoked on that, and then he was
13 ultimately found guilty of felony possession with intent
14 to distribute 40,000 cigarettes in Henrico.

15 And then November 17th of 2016, charged in
16 Albemarle County with possession of cigarettes with intent
17 to distribute, and found guilty of that. Again, a felony.

18 And then in March of 2017, he's found guilty of
19 violating the conditions of pretrial release.

20 And then in April of 2017, he's found guilty of
21 possession of cigarettes with intent to distribute on
22 August 8th of 2017.

23 So during the entire time that he has been here
24 between 2015 and 2017, he's done nothing but disobey
25 orders of the Court, failed to follow the supervised --

1 supervision terms and conditions, committed felony
2 offenses while on pretrial release while on bond, and
3 purchased a firearm while he is illegally here in the
4 United States through a straw purchaser, and admitted to
5 doing so. The testimony that the Court heard was not just
6 that the girlfriend that he had at the time said that he
7 had done that, in that the straw purchaser admitted that
8 he had done that, but that defendant himself also admitted
9 to having done it. That he possessed that firearm through
10 a third party because he knew he couldn't buy it because
11 he wasn't here legally in the United States.

12 So based on all the circumstances, the United
13 States would argue to the Court that he is both a risk of
14 flight and a danger to the community. Possession of a
15 firearm is a serious matter. Having a firearm for any
16 purpose, especially when you look at the fact that he is a
17 convicted cigarette trafficker, which involves significant
18 sums of cash on hand, it seems that possession of that
19 firearm had to be at least in part, if not all, for the
20 reason of him having to protect the proceeds of his
21 illegal activities.

22 So based on all of that information, Your Honor,
23 we'd ask the Court to find that there are no conditions,
24 or a combination of conditions, that would allow the
25 community to remain safe or ensure his return to court.

1 THE COURT: All right.

2 Mr. Camden.

3 MR. CAMDEN: A few things, Your Honor. None of
4 the allegations anywhere in this case involve any credible
5 violence, threats of violence, or risk of violence. This
6 is cigarette smuggling, which obviously is illegal, but
7 it's not in the same category as, say, drug trafficking
8 where people have to settle their debts or their disputes
9 through use of firearms, first.

10 Second, and regarding the risk of danger, I
11 would note all of -- the government says, for example,
12 that he was convicted of reckless driving. These are
13 reckless driving simply by speed. I think it was more
14 than 20 over 80 miles an hour. Yeah, reckless driving,
15 speeding 20 miles or more over the speed limit, and then
16 reckless driving, again, it was just speeding. So no
17 conduct that actually, in that particular case, put a
18 person at risk. The law in Virginia is simply that
19 speeding more than 20 miles over a speed limit is, per se,
20 reckless driving, first.

21 Second, he does have a friend here in court, a
22 cousin or a distance family member here, to support him.
23 I will say we're not going to proffer him as a third-party
24 custodian at this point. He has offered to allow
25 Mr. Horma to stay with him until he gets back on his feet

1 and is able to get a job since he does have employment
2 authorization; however, he also has certain charges. I
3 believe this investigation stems or spans a lot of
4 cigarette smuggling activities alleged, and it's possible
5 that there's some charges pending against him, so I don't
6 -- I'm not comfortable proffering him at this point.

7 However, he does have support from relatives that we've
8 been in touch with that live in Arlington and in Henrico.

9 I have been in touch with his immigration
10 attorney, the one who forwarded me a lot of his documents.
11 They are actively representing him on that case, Your
12 Honor. So the fact that there is an immigration detainer
13 I think should not preclude the Court from considering
14 conditions of release.

15 If he goes into immigration custody, he would
16 very likely, I hope at least, but he would at least have a
17 chance to argue that he should be allowed to bond out
18 pending those further proceedings.

19 His asylum claim was preliminary denied by
20 USCIS. The way these go is you apply to U.S. Citizenship
21 and Immigration Services first, they issue a decision
22 about whether to grant it or deny it, and then if they
23 deny it then you're sent to an immigration judge and
24 you're still allowed to claim it. This is not the end of
25 the road for him. He still has this pending application

1 that could be adjudicated.

2 I think the Court can see some of the basis for
3 the asylum claim in the pretrial services report. I'd
4 like to avoid stating it publicly, but especially at
5 page -- I believe Page 3 in the very middle -- actually,
6 under the mental health section, and also regarding his
7 spouse listed on Page 1.

8 THE COURT: I saw that.

9 MR. CAMDEN: Yes, Your Honor.

10 So in the country from which he was fleeing was
11 Martinia, so this is not somebody who can simply, you
12 know, gather the funds and go back to wherever they came
13 from in order to flee the jurisdiction of the Court. He's
14 got nowhere else to go. He is established here, he has
15 family here, and he is -- certainly, there's no indication
16 that he fled the Court's jurisdiction in any of the other
17 pending cases.

18 I believe given these circumstance that GPS
19 monitoring -- since he doesn't have a third-party
20 custodian, I would ask for GPS monitoring, electronic
21 location monitoring.

22 I can come back to the Court if the Court wanted
23 to delay the order for a little bit as soon as we can find
24 somebody who's a suitable person with whom he could live.
25 In the meantime, the Court could set as a condition that

1 pretrial services arrange for a temporary halfway house or
2 housing.

3 I think the important thing for him is to get
4 back to -- in touch with his lawyer and pursue his asylum
5 claim, to get that done, and to be able to work to help
6 support himself since he's pretty much without any sort
7 of -- obviously, his parents and his siblings are
8 unavailable to help him with this.

9 So, those are the reasons, Your Honor, I would
10 ask the Court to set conditions of release.

11 THE COURT: Thank you.

12 All right, Mr. Horma, would you stand up where
13 you are, please.

14 All right, after considering the evidence
15 elicited both during the preliminary hearing and the
16 detention hearing and the argument of counsel, and the
17 pretrial services report, the Court finds by clear and
18 convincing evidence that there are no conditions, or a
19 combination of conditions of release, that will reasonably
20 assure the safety of any person and the community.

21 And the Court also finds by a preponderance of
22 the evidence that there are no conditions, or combination
23 of conditions of release, that will reasonably assure your
24 appearance at further proceedings.

25 And I make these findings based on the

1 following:

2 One, the weight of the evidence against you is
3 strong.

4 Two, you're subject to a lengthy period of
5 incarceration if you're convicted.

6 Three, you have a prior criminal history that
7 includes three felony convictions for cigarette
8 trafficking or like offenses of cigarette trafficking.

9 Four, there's evidence that you participated in
10 criminal activity while on supervised probation.

11 Five, you have significant ties outside of the
12 United States.

13 Six, there's a lack of legal status in the
14 United States.

15 Seven, you're subject to removal or deportation
16 as there's a pending ICE detainer on you.

17 And eight, there's evidence in your criminal
18 history of prior violations while you were in pretrial
19 release status.

20 So when I look at all of those things, sir, I
21 don't believe that I can fashion any conditions, or a
22 combination of conditions, under which I can release you.

23 So I'm going to remand you to the continuing
24 custody of the United States Marshals pending
25 consideration of this matter by the grand jury.

1 Is there anything else from the government?

2 MS. MASTANDREA-MILLER: Nothing else at this
3 time. Thank you, Your Honor.

4 THE COURT: Anything else from you, Mr. Camden?

5 MR. CAMDEN: I would ask for clarification of a
6 backup probable cause issue. The Court found that there
7 was probable cause, but I think we need a little more
8 detail about it. Is the Court saying that -- well, the
9 factual findings, is the Court saying that he is illegally
10 or unlawfully present in the United States if he -

11 THE COURT: Yes.

12 MR. CAMDEN: If he has a pending asylum
13 application filed while he had regular status?

14 THE COURT: Yes.

15 MR. CAMDEN: And stays beyond that?

16 THE COURT: Yes.

17 MR. CAMDEN: Because I noted the government
18 proffered that there were cases, and didn't actually
19 provide any cases and I wasn't able to find any.

20 THE COURT: Yes. Thank you.

21 Anything else?

22 MS. MASTANDREA-MILLER: Nothing else, Your
23 Honor.

24 THE COURT: We'll stand in recess.
25

REPORTER'S CERTIFICATE

I, Krista Liscio Harding, OCR, RMR,
Notary Public in and for the Commonwealth of
Virginia at large, and whose commission expires
March 31, 2020, Notary Registration Number 149462,
do hereby certify that the pages contained herein
accurately reflect the recording transcribed by me,
to the best of my ability, in the above-styled
action.

Given under my hand this 2nd day of April, 2018.

Krista Liscio Harding, RMR
Official Court Reporter